

Senate File 26 - Introduced

SENATE FILE 26

BY BOLKCOM

A BILL FOR

1 An Act relating to the electronic recording of a custodial
2 interrogation in a criminal or juvenile case.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 823.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Custodial interrogation*" means questioning or other
5 conduct by a law enforcement officer which is reasonably likely
6 to elicit an incriminating response from an individual and
7 occurs when reasonable individuals in the same circumstances
8 would consider themselves in custody.

9 2. "*Electronic recording*" means an audio and video
10 recording that accurately records a custodial interrogation.
11 "Record electronically" and "recorded electronically" have a
12 corresponding meaning.

13 3. "*Law enforcement agency*" means a governmental entity
14 or other entity authorized by a governmental entity or state
15 law to enforce criminal laws or investigate suspected criminal
16 activity. The term does not include a law enforcement officer.

17 4. "*Law enforcement officer*" means an individual employed
18 by a law enforcement agency whose responsibilities include
19 enforcing criminal laws or investigating suspected criminal
20 activity, including but not limited to a peace officer as
21 defined in section 801.4 and a reserve peace officer as defined
22 in section 80D.1A.

23 5. "*Place of detention*" means a fixed location under the
24 control of a law enforcement agency where individuals are
25 questioned about alleged crimes or delinquent acts. The term
26 includes a jail, police or sheriff's station, a law enforcement
27 officer's vehicle, holding cell, and correctional or detention
28 facility.

29 6. "*Statement*" means a communication whether oral, written,
30 electronic, or nonverbal.

31 Sec. 2. NEW SECTION. 823.2 Electronic recording
32 requirement.

33 1. Except as provided in sections 823.4 through 823.9,
34 a custodial interrogation at a place of detention, including
35 the giving of any required warning, advice of the rights

1 of the individual being questioned, and the waiver of any
2 rights by the individual, shall be recorded electronically
3 in its entirety if the interrogation relates to any crime or
4 delinquent act.

5 2. If subsection 1 applies and a law enforcement officer
6 conducts a custodial interrogation without electronically
7 recording the interrogation in its entirety, the officer
8 shall prepare a written or electronic report explaining the
9 reason for not complying with this section and summarizing
10 the custodial interrogation process and the individual's
11 statements.

12 3. A law enforcement officer shall prepare the report
13 required by subsection 2 as soon as practicable after
14 completing the custodial interrogation.

15 Sec. 3. NEW SECTION. **823.3 Notice and consent not required.**

16 1. A law enforcement officer conducting a custodial
17 interrogation is not required to obtain consent to electronic
18 recording from the individual being interrogated or to inform
19 the individual that an electronic recording is being made of
20 the interrogation.

21 2. This chapter shall not be construed to allow a law
22 enforcement officer or a law enforcement agency to record
23 a private communication between an individual and the
24 individual's lawyer.

25 Sec. 4. NEW SECTION. **823.4 Feasibility of recording —**
26 **spontaneous statement exceptions.**

27 1. A custodial interrogation is not required to be recorded
28 electronically pursuant to section 823.2 if the recording is
29 not reasonably feasible under the circumstances. The law
30 enforcement officer conducting the custodial interrogation
31 shall record electronically an explanation of the exigent
32 circumstances before conducting the custodial interrogation,
33 if feasible, or as soon as practicable after the custodial
34 interrogation is completed.

35 2. An electronic recording is not required for a spontaneous

1 statement made outside the course of a custodial interrogation
2 or a statement made in response to a question asked routinely
3 during the processing of an individual following the
4 individual's arrest.

5 **Sec. 5. NEW SECTION. 823.5 Refusal to be electronically**
6 **recorded — exception.**

7 1. A custodial interrogation is not required to be
8 recorded electronically pursuant to section 823.2 if the
9 individual to be interrogated indicates the individual will
10 not participate in the interrogation if the interrogation
11 is recorded electronically. If feasible, the agreement to
12 participate without an electronic recording must be recorded
13 electronically.

14 2. If, during a custodial interrogation that occurs under
15 section 823.2, the individual being interrogated indicates that
16 the individual will not participate in further interrogation
17 unless electronic recording ceases, the remainder of the
18 custodial interrogation is not required to be recorded
19 electronically. If feasible, the individual's agreement to
20 participate without further electronic recording must be
21 recorded electronically.

22 3. A law enforcement officer, with the specific intent to
23 avoid the electronic recording requirement in section 823.2,
24 shall not encourage an individual to request that an electronic
25 recording not be made.

26 **Sec. 6. NEW SECTION. 823.6 Interrogation conducted by other**
27 **jurisdiction — exception.**

28 If a custodial interrogation occurs in another state
29 in compliance with that state's law or is conducted by a
30 federal law enforcement agency in compliance with federal law,
31 the custodial interrogation is not required to be recorded
32 electronically unless the custodial interrogation is conducted
33 on behalf of an Iowa law enforcement agency with the specific
34 intent to avoid the electronic recording requirement in section
35 823.2.

1 Sec. 7. NEW SECTION. **823.7 Belief — exception.**

2 1. A custodial interrogation is not required to be
3 recorded electronically pursuant to section 823.2 if the
4 custodial interrogation occurs when the law enforcement officer
5 conducting the custodial interrogation has no knowledge of
6 facts and circumstances that would lead the law enforcement
7 officer reasonably to believe that the individual being
8 interrogated may have committed an act which requires that a
9 custodial interrogation be recorded electronically pursuant to
10 section 823.2.

11 2. If, during such a custodial interrogation, the
12 individual being interrogated reveals facts and circumstances
13 giving the law enforcement officer conducting the custodial
14 interrogation reason to believe that an act has been
15 committed which requires that a custodial interrogation be
16 recorded electronically pursuant to section 823.2, continued
17 custodial interrogation concerning that act must be recorded
18 electronically, if feasible.

19 Sec. 8. NEW SECTION. **823.8 Safety — exception.**

20 A custodial interrogation is not required to be recorded
21 electronically pursuant to section 823.2 if the law enforcement
22 officer conducting the custodial interrogation or the officer's
23 superior reasonably believes that electronic recording
24 would disclose the identity of a confidential informant
25 or jeopardize the safety of a law enforcement officer, the
26 individual being interrogated, or another individual. If
27 feasible and consistent with the safety of a confidential
28 informant, an explanation of the basis for the belief that an
29 electronic recording would disclose the informant's identity
30 must be recorded electronically at the time of the custodial
31 interrogation. If contemporaneous recording of the basis for
32 the belief is not feasible, the electronic recording must be
33 made as soon as practicable after the custodial interrogation
34 is completed.

35 Sec. 9. NEW SECTION. **823.9 Equipment malfunction —**

1 **exception.**

2 All or part of a custodial interrogation is not required to
3 be recorded electronically pursuant to section 823.2 to the
4 extent that the electronic recording is not feasible because
5 the available electronic recording equipment fails, despite
6 reasonable maintenance of the equipment, and timely repair or
7 replacement is not feasible.

8 Sec. 10. NEW SECTION. **823.10 Burden of proof.**

9 If the prosecution relies on an exception described in
10 sections 823.4 through 823.9 to justify a failure to record
11 electronically a custodial interrogation, the prosecution must
12 prove by a preponderance of the evidence that the exception
13 applies.

14 Sec. 11. NEW SECTION. **823.11 Notice of intent to introduce**
15 **unrecorded statement.**

16 If the prosecution intends to introduce in its case-in-chief
17 a statement made during a custodial interrogation which was
18 not recorded electronically and section 823.2 applies to that
19 statement, the prosecution, not later than the time specified
20 in rule of criminal procedure 2.11, shall serve the defendant
21 with written notice of that intent and of any exception on
22 which the prosecution intends to rely.

23 Sec. 12. NEW SECTION. **823.12 Procedural remedies.**

24 1. Unless the court finds that an exception in sections
25 823.4 through 823.9 applies, the court shall consider the
26 failure to record electronically all or part of a custodial
27 interrogation pursuant to section 823.2 as a factor in
28 determining whether a statement made during the custodial
29 interrogation is admissible, including whether it was
30 voluntarily made.

31 2. If the court admits into evidence a statement made during
32 a custodial interrogation that was not recorded electronically
33 pursuant to section 823.2, the court, upon request of the
34 defendant, shall give a cautionary instruction to the jury,
35 unless such an instruction would be confusing or not beneficial

1 to the jury.

2 Sec. 13. NEW SECTION. 823.13 Handling and preserving
3 electronic recording — spoliation.

4 A law enforcement agency in this state shall establish and
5 enforce procedures to ensure that the electronic recording
6 of all or part of a custodial interrogation is identifiable,
7 accessible, and preserved for a period of three years after
8 the date of the limitation for the commencement of a criminal
9 action as set forth in chapter 802.

10 Sec. 14. NEW SECTION. 823.14 Rules relating to electronic
11 recording.

12 1. A law enforcement agency that is a governmental entity
13 of this state shall adopt and enforce rules to administer this
14 chapter.

15 2. The rules adopted under subsection 1 shall address the
16 following:

17 a. The manner in which an electronic recording is made.

18 b. The collection and supervisory review of an electronic
19 recording.

20 c. Supervisory responsibilities imposed on individuals
21 in specific positions in order to ensure adequate staffing,
22 education, training, material resources, and a chain of command
23 to promote internal accountability.

24 d. A process that details when noncompliance with procedures
25 occurs.

26 e. The imposition of administrative sanctions for failure to
27 comply with procedures that is not justified.

28 f. A process for monitoring the chain of custody of an
29 electronic recording.

30 3. The rules adopted under subsection 2, paragraph "a", for
31 video recordings must contain standards for the angle, focus,
32 and field of vision of a recording device which reasonably
33 promote an accurate recording of a custodial interrogation at a
34 place of detention and a reliable assessment of its accuracy
35 and completeness.

1 advice of the rights of the individual being questioned, and
2 the waiver of any rights by the individual, must be recorded
3 electronically in its entirety by both audio and video means if
4 the interrogation relates to any crime or delinquent act.

5 The bill defines "custodial interrogation" to mean
6 questioning or other conduct by a law enforcement officer which
7 is reasonably likely to elicit an incriminating response from
8 an individual and occurs when reasonable individuals in the
9 same circumstances would consider themselves in custody.

10 The bill defines "place of detention" to mean a fixed
11 location under the control of a law enforcement agency where
12 individuals are questioned about alleged crimes or delinquent
13 acts. The term includes a jail, police or sheriff's station,
14 a law enforcement officer's vehicle, holding cell, and
15 correctional or detention facility.

16 The bill does not require a law enforcement officer to
17 obtain consent or inform the person being interrogated that the
18 interrogation is being electronically recorded.

19 The bill does not apply to a spontaneous statement made
20 outside the course of the custodial interrogation or a
21 statement made in response to a question asked routinely during
22 the processing of the arrest of an individual.

23 The requirements of the bill also do not apply to
24 the following situations: if the electronic recording
25 is not reasonably feasible under the circumstances, the
26 individual refuses to participate in the interrogation
27 if the interrogation is being recorded, the interrogation
28 occurs in another jurisdiction in compliance with the other
29 jurisdiction's laws or by federal law enforcement in compliance
30 with federal law, the law enforcement officer has no knowledge
31 of the facts that would lead the officer to reasonably believe
32 that the individual being interrogated committed an act which
33 would require the interrogation to be electronically recorded,
34 the law enforcement officer conducting the interrogation
35 reasonably believes the electronic recording would disclose

1 the identity of a confidential informant or jeopardize the
2 safety of an officer or another individual, or the electronic
3 recording equipment fails.

4 If feasible under the circumstances, the bill requires the
5 reason for not electronically recording an interrogation to be
6 contemporaneously electronically recorded.

7 The bill prohibits a law enforcement officer from
8 encouraging an individual to request an interrogation not be
9 electronically recorded.

10 If the prosecution relies on an exception to not
11 electronically record an interrogation, the bill specifies that
12 the burden is on the prosecution to prove by a preponderance of
13 the evidence that an exception does apply.

14 The bill requires the prosecution to provide written notice
15 to a defendant of the intent to rely upon a statement made in a
16 custodial interrogation which was not electronically recorded
17 within 40 days of arraignment.

18 The bill specifies that the court shall consider the
19 failure to electronically record all or part of a custodial
20 interrogation, unless an exception applies, as a factor in
21 determining whether a statement made during the interrogation
22 is admissible, including whether the statement was voluntarily
23 made.

24 The bill requires a law enforcement agency to establish and
25 enforce procedures to ensure that the electronic recording is
26 identifiable, accessible, and preserved for a period of three
27 years after the date of the limitation for the commencement of
28 a criminal action as set forth in Code chapter 802.

29 The bill requires a law enforcement agency to establish
30 rules relating to the following: the manner in which an
31 electronic recording is made including the angle and focus
32 of the camera, supervisory responsibilities, a process
33 that details when noncompliance with procedures occurs, the
34 imposition of administrative sanctions for a failure to comply
35 with the procedures, and a process for monitoring the chain of

1 custody of an electronic recording.

2 The bill does not create a right that requires a custodial
3 interrogation to be recorded electronically or require a
4 transcript of an electronically recorded interrogation to be
5 prepared.

6 The bill may include a state mandate as defined in Code
7 section 25B.3. The bill makes inapplicable Code section 25B.2,
8 subsection 3, which would relieve a political subdivision from
9 complying with a state mandate if funding for the cost of
10 the state mandate is not provided or specified. Therefore,
11 political subdivisions are required to comply with any state
12 mandate included in the bill.